

of part 4279 of this chapter. The Administrator may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's interest.

§§ 4287.304–4287.305 [Reserved]

§ 4287.306 Appeals.

Section 4279.16 of subpart A of part 4279 of this chapter applies to this subpart.

§ 4287.307 Servicing.

Except as specified in paragraphs (a) through (m) of this section, all loans guaranteed under this subpart shall comply with the provisions found in §§ 4287.101 through 4287.180 of this chapter. If the Agency determines that the lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency. Any cost to the Agency associated with such action will be assessed against the lender.

(a) *Periodic reports.* Each lender shall submit quarterly reports, unless more frequent ones are needed as determined by the Agency to meet the financial interests of the United States, regarding the condition of its Agency guaranteed loan portfolio (including borrower status and loan classification) and any material adverse change in the general financial condition of the borrower since the last report was submitted.

(b) *Default reports.* Lenders shall submit monthly default reports, including borrower payment history, for each loan in monetary default using a form approved by the Agency.

(c) *Financial reports.* The financial report requirements specified in § 4287.107(d) apply except as follows:

(1) The financial reports required under § 4287.107(d) may be specified in either the loan agreement or the Conditional Commitment;

(2) The lender must submit to the Agency quarterly financial statements within 45 days of the end of each quarter; and

(3) The annual financial statements required under § 4287.107(d) must be audited financial statements and must be submitted within 180 days.

(d) *Additional loans.* Instead of complying with the additional expenditures provisions specified in § 4287.107(e), the lender may make additional expenditures or new loans to a borrower with an outstanding loan guaranteed only with prior written Agency approval. The Agency will only approve additional expenditures or new loans where the expenditure or loan will not violate one or more of the loan covenants of the borrower's loan agreement. In all instances, the lender must notify the Agency when they make any additional expenditures or new loans. Any additional expenditure or loan made by the lender must be junior in priority to the loan guaranteed under 7 CFR part 4279 except for working capital loans for which the Agency may consider a subordinate lien provided it is consistent with the conditional provisions specified in § 4279.202(i)(1).

(e) *Interest rate adjustments.* The provisions of § 4287.112 apply, except for § 4287.112(a)(2).

(f) *Collateral inspection and release.* In lieu of complying with § 4287.113, lenders must comply with the provisions of this paragraph. The lender must inspect the collateral as often as necessary to properly service the loan. The Agency must give prior approval for the release of collateral, except as specified in paragraph (f)(1) of this section or where the release of collateral is made under the abundance of collateral provision of the applicable security agreement, subject to the provisions of paragraph (f)(3) of this section. Appraisals on the collateral being released are required on all transactions exceeding \$250,000 and will be at the expense of the borrower. The appraisal must meet the requirements of § 4279.244. The sale or release of collateral must be based on an arm's length transaction, unless otherwise approved by the Agency in writing.

(1) Lenders may, over the life of the guaranteed loan, release collateral

with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence (subject to the provisions of paragraph (f)(3) of this section) if the proceeds generated are used to pay down secured debt in order of lien priority or to buy replacement collateral.

(2) Release of collateral with a cumulative value in excess of 20 percent of the original loan or when the proceeds will not be used to pay down secured debt in order of lien priority or to buy replacement collateral, must be requested, in writing, by the lender and concurred by the Agency, in writing, in advance of the release. A written evaluation will be completed by the lender to justify the release.

(3) Lenders may not release collateral with a value of more than 10 percent of the original loan amount at any one time and within any one calendar year without Agency concurrence.

(4) Any release of collateral must not adversely affect the project's operation or financial condition.

(g) *Subordination of lien position.* In addition to complying with the provisions found in § 4287.123, a subordination must not extend the term of the guaranteed loan.

(h) *Transfers and assumptions.* Transfers and assumptions shall comply with § 4287.134, except as specified in paragraphs (h)(1) through (h)(3) of this section, and with paragraphs (h)(4) and (h)(5) of this section.

(1) In complying with § 4287.134(a), eligible applicants shall be determined in accordance with subpart C of part 4279 of this chapter instead of subpart B of part 4279.

(2) Any new loan terms under § 4287.134(b) must be within the terms authorized by § 4279.232 of subpart C of part 4279 of this chapter instead of § 4279.126 of subpart B of part 4279.

(3) Additional loans under § 4287.134(e) will be considered as a new loan application under subpart C of part 4279 of this chapter instead of subpart B of part 4279.

(4) The Agency may charge the lender a nonrefundable transfer fee at the time of a transfer application. The Agency will set the amount of the transfer fee in an annual notice of

funds availability published in the FEDERAL REGISTER.

(5) Assumption shall be deemed to occur in the event of a change in the control of the borrower. For purposes of the loan, change of control means the merger of the borrower, sale of all or substantially all of the assets of the borrower, or the sale of more than 25 percent of the stock or other equity interest of either the borrower or its corporate parent.

(6) The Agency will not approve any change in terms that results in an increase in the cost of the loan guarantee, unless the Agency can secure any additional budget authority that would be required and the change otherwise conforms with applicable regulations.

(i) *Substitution of lender after issuance of the Loan Note Guarantee.* All substitutions of lenders must comply with § 4287.135 except that, instead of approving a new lender as a substitute lender using the provisions of § 4287.135(a), the Agency may approve the substitution of a new lender if the proposed substitute lender:

(1) Is an eligible lender in accordance with § 4279.202(b);

(2) Is able to service the loan in accordance with the original loan documents; and

(3) Acquires title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

(j) *Default by borrower.* The provisions of § 4287.145 apply to this subpart, except that:

(1) Instead of complying with § 4287.145(b)(2), in the event a deferment, rescheduling, reamortization, or moratorium is accomplished, it will be limited to the remaining life of the collateral or remaining limits as contained in § 4279.232(a) of part 4279 of this chapter; and

(2) If a loan goes into default, the lender must provide the notification required under § 4287.145(a) to the Agency within 15 calendar days of when a borrower is 30 days past due on a payment or is otherwise in default of the Loan Agreement.

(k) *Protective advances.* All protective advances made by the lender must comply with §4287.156 and the provisions of paragraphs (k)(1) and (k)(2) of this section.

(1) Instead of the \$5,000 specified in §4287.156(c), the Agency's written authorization is required when cumulative protective advances exceed \$100,000, unless otherwise specified by the Agency at a lesser amount.

(2) The lender must obtain written Agency approval for any protective advance that will singularly or cumulatively amount to more than \$100,000 or 10 percent of the guaranteed loan, whichever is less.

(l) *Liquidation.* Liquidations shall comply with §4287.157, except that, in complying with §4287.157(d)(13), lenders are to obtain an independent appraisal report meeting the requirements of §4279.244, instead of §4279.144, when the outstanding balance of principal and accrued interest is \$200,000 or more.

(m) *Determination of loss and payment.* In addition to complying with §4287.158, if a lender receives a final loss payment, the lender must submit to the Agency an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.

§ 4287.308 Fiscal Year 2009 and Fiscal Year 2010 loan guarantees.

Any loan guarantee application that has been submitted to the Agency under this program prior to March 16, 2011 may submit to the Agency a written request for an irrevocable election to have the guaranteed loan serviced in accordance with this subpart. Such an election must be made by October 1, 2011.

§§ 4287.309–4287.400 [Reserved]

PART 4288—PAYMENT PROGRAMS

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- 4288.190 Fiscal Year 2010 applications.
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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989.